

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 12713 of 2007

DATE: 21-06-2007

Between :

Konthala Varalskhmi and 4 others. ... Petitioners

And

The Chief Manager & Authorised Officer,
State Bank of India, Stressed Assets Resolution
Centre, Visakhapatnam and another. ... Respondents

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 12713 of 2007

ORDER:

This writ petition is filed seeking a declaration that the tender notice dated 19-04-2007 issued by the first respondent proposing to sell the house bearing Dr.No.26-1-65 covered by T.S.No.160 part Block No.7, Bowdara Road, Market Ward, Visakhapatnam is arbitrary and illegal and contrary to Section 13 (3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') apart from being violative of principles of natural justice.

The facts, in brief, are as under:

The first petitioner is the wife of the second respondent herein. It is not in dispute that the second respondent was granted financial assistance by the State Bank of India, Visakhapatnam to which one Gandepalli Samudralu stood as guarantor by depositing the title deeds in respect of the property in question. Since the second respondent committed default in repayment, the State Bank of India filed O.S.No.294 of 1991 in the Court of the Principal Subordinate Judge, Visakhapatnam seeking a decree for recovery of the amounts due under the loan account against the second respondent who is the borrower, Smt.Samudralu who is the guarantor apart from the first petitioner herein and one Gandepalli Narayana.

After constitution of the Tribunals, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the said suit having been transferred to the Debts Recovery Tribunal, Visakhapatnam has been re-numbered as O.A.No.141 of 2006 and is still pending.

While so the first respondent, having invoked the provisions of the Act, issued a demand notice dated 23-09-2006 under Section 13(2) of the Act, calling upon the borrower (second respondent herein) as well as the writ petitioners describing them as guarantors, to discharge the liability under the loan account within 60 days failing which the rights under sub-section (4) of Section 13 would be exercised.

Since there was no response to the said notice, the first respondent-Bank issued possession notice dated 02-02-2007 under Section 13(4) of the Act thereby taking constructive possession of the secured asset i.e. the house property in question. Thereafter, the first respondent-Bank issued another notice dated 19-04-2007 informing the petitioners that it has been decided to sell off the secured asset at the best price offered and calling upon them to declare their liability amounting to Rs.22,87,191/- together with interest within 30 days, failing which the secured asset would be disposed of without further notice.

Having received the said notices, the petitioners herein submitted a representation dated 31-05-2007 to the first respondent by registered post requesting not to take any steps for sale of the secured assets since O.A.No.141 of 2006 filed by the Bank for recovery of the amount due is still pending before the Tribunal. However, the first respondent-Bank, without considering their request, published the impugned tender notice in the local dailies inviting tenders for of the house property, as is where is basis. Hence, this writ petition.

I have heard the learned counsel for the petitioner in detail and perused the material on record.

The learned counsel for the petitioner contended that the action of the first respondent-Bank in proposing to sell the secured assets under the impugned notice without considering the objections raised by the petitioners is contrary to Sub-section (3-A) of Section 13 of the Act and therefore, on that ground alone the impugned sale notice is

liable to be set aside. It is also contended that since admittedly the proceedings are pending before the Debts Recovery Tribunal, for recovery of the amounts due under the loan account, in which the liability of the petitioners herein has been disputed, they cannot be treated as guarantors and consequently the first respondent-Bank is not entitled to enforce the provisions of the Securitisation Act against the properties of the petitioners.

It is true that the first petitioner herein who was arrayed as 4th defendant in O.S.No.294 of 1991 filed a written statement contesting the suit claim. In the said written statement it was stated that the second defendant –Samudralu was not the owner of the mortgaged property which was offered as security and that as a matter of fact, one G.Satyanarayana was the absolute owner of the property. It was also claimed that by virtue of a registered Will deed dated 24-11-1949 executed by G.Satyanarayana she acquired 1/5th share in the said property along with the second defendant (Smt.Samudralu) and three others. Thus, it was contended that the mortgage created by Smt.Samudralu by depositing title deeds styling herself as the absolute owner was not valid. It was also pleaded in the written statement that the suit property was already mortgaged on 20-02-1980 and 17-03-1990 in favour of one Smt. Rajeswari under registered documents and therefore the Bank cannot claim any right.

It was also their case that late Samudralu had acquired only 1/5th undivided and unspecified share in the property in question under the Will dated 24-11-1949. Subsequently, Smt.Samudralu died intestate on 12-04-1991 and being her daughter the petitioner had succeeded to her 1/5th share along with three other legal heirs.

Since the said suit is still pending and the liability of the petitioners who claim to have subsisting rights in the mortgaged property has not yet been decided, it is contended by the learned counsel for the petitioners that the first respondent-Bank cannot enforce the secured assets.

Even assuming that all the petitioners herein are having subsisting rights in the mortgaged property, since admittedly the demand notice under Section 13(2) of the Act was issued by the first respondent Bank long back on 23-09-2006, the petitioners ought to have made a representation disputing their liability as provided under sub-section (3A) of Section 13 of the Act, in which event the first respondent is bound to consider and dispose of the representation. Though the petitioners have not disputed the service of notice under Section 13(2) of the Act, admittedly they failed to raise any objection in response to the said demand notice. Having failed to raise such objections, it is not open to the petitioners to contend that the first respondent had acted arbitrarily in issuing the possession notice under Section 13(4) of the Act.

The representation dated 31-05-2007 was made by the petitioners only after receiving the registered notice dated 19-04-2007 issued by the first respondent informing that the mortgaged property would be sold and calling upon them to come forward and declare their liability. The said representation dated 31-05-2007 cannot be treated as objections under sub-section (3-A) of Section 13 of the Act and consequently the alleged failure of the first respondent to consider the same is not a valid ground to hold that the subsequent proceedings are initiated.

At any rate since possession notice under Section 13 (4) of the Act was issued long back taking constructive possession of the secured assets, in case the petitioners are aggrieved, it is for them to work out the remedy under Section 17 of the Act by making an appropriate application before the Debts Recovery Tribunal having jurisdiction in which event the Tribunal would consider the validity of the measures taken by the secured creditor including the objection to the validity of the mortgage created by late Samudralu and pass appropriate orders in accordance with law.

The pendency of the proceedings before the Tribunal for

recovery of the amounts due does not disentitle the first respondent-Bank to enforce the secured assets under the Act since the provisions of the Act have overriding effect over other laws. The remedy under the Act is a special remedy under which the secured creditor is entitled to proceed against the secured assets without interference by the Courts and Tribunals.

Hence, the writ petition is devoid of any merit and the interference by this Court is unwarranted.

Accordingly, the writ petition is dismissed. No costs.

G. ROHINI, J

Date: 21-06-2007
KLP